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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
MUR 6813) DISMISSAL AND CASE
Cox for Congress) CLOSURE UNDER THE
and David Cox as treasurer) ENFORCEMENT PRIORITY
David Cox) SYSTEM
Gregory F. Smith)

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances or, where the record indicates that no violation of the Act has occurred, to make no reason to believe findings. The Office of General Counsel has scored MUR 6813 as a low-rated matter¹ and has determined that it should not be referred to the Alternative Dispute Resolution Office.

For the reasons set forth below, the Office of General Counsel recommends that the Commission exercise its prosecutorial discretion and dismiss MUR 6813 as to Cox for

¹ The EPS rating information is as follows:

Complaint Filed: April 29, 2014.

Response from Gregory F. Smith Filed: May 22, 2014. Response from Cox for Congress and David Cox Filed: June 5, 2014.

Congress and David Cox in his official capacity as treasurer ("Committee"), David Cox, and Gregory F. Smith.²

Complainant Elvira F. Hasty alleges that Smith made and the Committee accepted excessive contributions during the 2014 election cycle. Compl. at 1-2. The complainant also alleges that the Committee improperly reported a \$3,000 contribution from Smith as a loan, and that Smith's corporation, Smith, Powell and Associates, made a \$2,000 prohibited contribution to the Committee. *Id.* Finally, the Complainant alleges that Smith's name is spelled differently in several disclosure reports, possibly to avoid detection of his excessive contributions. *Id.* at 2. Complainant bases her allegations on information contained in the Committee's disclosure reports as follows:

CONTRIBUTOR	DATE	AMOUNT	ELECTION	REPORT AND NOTES
Gregory Smith	5/22/13	\$500	Primary	Original 2013 July Quarterly and Amended 2013 July Quarterly (5/15/14)
Gregory Smith	6/20/13	\$3,000	Primary	Same; contribution also identified on Schedule C as a loan
Greg Smith	7/12/13	\$500	Primary	Original 2013 October Quarterly; Amended 2013 October Quarterly (5/15/14) shows contributor as "Greggory Smith;" \$3,000 "loan" from prior report not carried over

² Cox for Congress is an authorized campaign committee of David Cox, an unsuccessful candidate in the 2014 general election for Florida's 6th Congressional District.

Greg Smith	9/28/13	\$500	Primary	Same
Gregg Smith	12/6/13	\$500	Primary	Original 2013 Year End Report; Amended 2013 Year End (5/15/14) changed name to "Greggory Smith;"
Smith, Powell, and Associates	12/5/13	\$500	Primary	Original 2013 Year End and Amended 2013 Year End
Smith, Powell, and Associates	12/13/13	\$1,500	Primary	Same
Gregg Smith	1/30/14	\$500	Primary	April 2014 Quarterly Report

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2 The Complainant alleges that Smith's individual contributions exceeded the maximum
3 individual contribution limit, even if the contributions were designated to both the primary
4 and general elections. *Id.* at 1. The Complainant further alleges that Smith's corporation is
5 comprised of two partners, and thus half of its \$2,000 contribution should be attributable to
6 Smith, thereby further increasing his excessive contribution. *Id.* at 2.

7 Cox and the Committee responded that Cox and his "team" "immediately" began
8 auditing the Committee's filings and amending any mistakes. Cox Resp. at 1. Cox also said
9 he intended to amend the filings for name consistency and return any excessive funds. *Id.*
10 Cox stated that he was a first-time candidate and did not act intentionally. *Id.*

11 Smith responded that he was unaware of campaign contribution limits. Smith Resp.
12 at 1. He said that he understood that the Committee would be refunding him \$3,000. *Id.* He
13 also said that Smith, Powell and Associates is his franchise and that he is its sole proprietor.
14 *Id.*

15 During the 2014 election cycle, the individual contribution limit was \$2,600 to any
16 candidate or his or her authorized committee per election. 52 U.S.C. § 30116(a)(1)(A). The

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1 term "contribution" includes loans. 52 U.S.C. § 30101(8)(A)(i). Political committees may
2 accept contributions from partnerships and certain LLCs. *See* 11 C.F.R. §§ 110.1(e)
3 (partnership contributions), 110.1(g) (LLC contributions). Political committees may also
4 accept contributions from sole proprietorships, so long as the sole proprietor is permitted to
5 make a contribution under the Act. *See* Advisory Op. 1980-89 (Coelho) at 2 (a contribution
6 by a sole proprietorship is treated as a contribution by the individual who is the sole proprietor
7 of the business); Advisory Op. 1989-21 (Create-a-Craft) at 2 (sole proprietors are subject to
8 the limitations concerning excessive, as opposed to prohibited, contributions).

9 Smith, while using one of the various first names of Greg, Gregg, Gregory, or
10 Gregory, contributed a total of \$5,500 to the Committee, all designated for the primary
11 election, including a \$3,000 "loan." Because Smith did not make any general election
12 contributions, \$2,600 of his \$5,500 total contribution could have been redesignated for the
13 general. It appears, however, that the Committee did not follow the proper procedures in
14 order to timely seek redesignation of the primary contributions. *See* 11 C.F.R.
15 § 110.1(b)(5)(ii)(B)(5).³

16 In addition, the sole proprietorship of Smith, Powell, and Associates contributed
17 \$2,000 to the Committee. Since Smith is the sole proprietor of Smith, Powell, the \$2,000
18 contribution is also attributed to Smith. Thus, Smith contributed a total of \$7,500 in primary
19 contributions to the Committee. In the absence of any redesignation, Smith exceeded the
20 contribution limits for the primary election by \$4,900. The Committee appears to have
21 refunded \$300 to Smith on June 29, 2014, which still leaves \$4,600 in unrefunded primary
22 contributions that exceed the per election limitation. 52 U.S.C. § 30116(a)(1)(A).

³ The notice to the contributor regarding redesignation must be sent within 60 days of the receipt of the contribution. Otherwise, the excessive contribution must be refunded. 11 C.F.R. § 110.1(b)(5)(ii)(B).

1 Therefore, Gregory F. Smith violated 52 U.S.C. § 30116(a)(1)(A) by making
2 excessive contributions, and Cox for Congress violated 52 U.S.C. § 30116(f) by accepting
3 excessive contributions. The Committee also appears to have misreported a \$3,000
4 contribution by Smith as a loan in its original and amended 2013 July Quarterly Reports.⁴

5 In light of the amounts at issue, the fact that the candidate was a first-time candidate
6 and the contributor was not an experienced contributor,⁵ and the Committee's request to
7 terminate, the Office of General Counsel recommends that the Commission exercise its
8 prosecutorial discretion, pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985), to dismiss this
9 matter as to Cox for Congress and David Cox in his official capacity as treasurer, David Cox,
10 and Gregory F. Smith. Additionally, the Office of General Counsel recommends that the
11 Commission remind the Committee to refund the excessive contributions to Gregory F. Smith
12 and file amended disclosure reports to reflect such activity. Finally, the Office of General
13 Counsel recommends that the Commission approve the attached Factual and Legal Analysis
14 and the appropriate letters, and close the file.

15 **RECOMMENDATIONS**
16

- 17 1. Dismiss the matter as to Cox for Congress and David Cox in his official capacity as
18 treasurer;
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20 2. Dismiss the matter as to David Cox;
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22 3. Dismiss the matter as to Gregory F. Smith;
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24 4. Remind Cox for Congress and David Cox in his official capacity as treasurer to refund
25 the excessive contributions made by Gregory F. Smith and Smith, Powell, and
26 Associates, and file the appropriate disclosure reports reflecting such activity;

⁴ Although Cox said in his and the Committee's Response that he would file amended reports to correct name consistency and refund any excessive contributions, the Committee's amended reports do not show such actions, except for a \$300 refund.

⁵ According to Commission records, Smith made one prior federal contribution in 2008 for \$1,000.

5. Approve the attached Factual and Legal Analysis and the appropriate letters; and
6. Close the file.

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3.24.16
Date

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